

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMACCERISION

Acceris Communications Corp.	:	
	:	
Application for a certificate of local	:	04-0429
Authority to operate as a reseller and	:	
facilities based /UNE-P carrier of	:	
telecommunications services throughout	:	
the State of Illinois.	:	

ORDER

By the Commission:

On June 9, 2004, Acceris Communications Corp (Acceris) filed a verified application with the Illinois Commerce Commission for a certificate of service authority to provide resold local exchange and facilities-based UNE-P (Unbundled Network Elements-Platform) local telecommunications services throughout the state of Illinois, in accordance with Sections 13-404 and 13-405 of the Illinois Public Utilities Act. 220 ILCS 5/13-404 and 5/13-405. No petitions to intervene were filed.

After the Commission gave notice as required by the Public Utilities Act and the Illinois Administrative Code, an administrative law judge conducted evidentiary hearings on this application on June 28, 2004, and November 23, 2004, at the Commission offices in Chicago, Illinois.

The verification attesting to the truthfulness of the application was sworn to by Kelly D Murumets, who identified herself as Acceris' president. The Applicant was represented by counsel at the hearing and presented evidence in support of its application through testimony by Thomas Jones, the company's senior vice president of local and marketing. Mark Hanson, a rate analyst in the Commission's Telecommunications Division, appeared on behalf of Commission Staff. At the conclusion of the November 23, 2004, hearing, the evidentiary record in this proceeding was marked *heard and taken*.

The Applicant is a Delaware corporation, initially incorporated on May 25, 2000, under the name PT-1 Counsel Inc.; later, PT-1 Long Distance, Inc.; and, most recently, WorldxChange Corp. The company changed its name to Acceris Communications Corp. on June 20, 2004. At the time it filed this application, the Applicant was not authorized to transact business in Illinois due to a failure to file an annual report with the Illinois Secretary of State. By the November 2004 hearing, that matter had been remedied, and the Applicant now is authorized to transact business in Illinois.

The Applicant's controlling shareholder is a company named Counsel Corporation that Thomas Jones testified he believed has investments predominantly within the telecommunications industry. The Applicant's principal place of business is in San Diego, California.

According to the Applicant, its principal business has been domestic and international long-distance telecommunications services, including in Illinois, for the past eighteen months to two years. On March 1, 2000, the Commission granted the Applicant interexchange telecommunications authority in Docket 00-0457. The Applicant reports it is applying for authorization to provide complete local exchange services throughout the United States, and so far has obtained authority to provide such services to fourteen other states (Alabama; California; Delaware; Florida; Kentucky; Louisiana; Maryland; Massachusetts; Montana; New Jersey; New York; Pennsylvania; Rhode Island; and South Carolina). The Applicant never has been denied a telecommunications services certificate; nor has it ever had a telecommunications certification revoked or suspended in any jurisdiction. Jones testified that "a couple" of informal, but no formal, complaints have been filed with the U.S. Federal Communications Commission against the company.

The Applicant identified a twenty-four-hour toll-free telephone and address that would be supplied to Illinois customers who want to make complaints or have other service needs.

The Applicant commits to all Illinois and federal telecommunications carrier laws and regulations prohibiting carriers from switching customers' long distance service from one company to another without customer authorization, known in the telecommunications industry as *slamming*; and billing customers for services such as voice mail, caller-ID, and call-waiting, which they have not ordered, known as *cramming*. 220 ILCS 5/3-902; and 47 U.S.C. Sec. 258.

Customers who want to contact the Applicant will be able use a toll-free telephone number the Applicant will supply them.

Having considered the Applicant's ownership structure, business status in other states, and provisions for customer service, we now turn to the Public Utilities Act requirement that a carrier possess sufficient technical, managerial, and financial resources and abilities to provide telecommunications services. 220 ILCS 5/13-404.

The Applicant seeks to offer resold local exchange and facilities-based UNE-P services by purchasing the services of incumbent local exchange telecommunications carriers Ameritech and SBC.

As evidence of its technical and managerial skills, Acceris filed narrative summaries of the backgrounds of its chairman and chief executive officer; president; chief financial officer; chief operating officer; executive vice president, sales and marketing; senior vice president, mergers and acquisitions and business development;

and senior vice president and corporate secretary. Together these company officials have management, accounting, finance, marketing, and sales experience. The company's chief operating officer has engineering and telecommunications operating experience.

As for financial resources, the Applicant submitted as part of its application a copy of parent company Acceris Communications Inc.'s annual 2003 report to the U.S. Securities and Exchange Commission Form 10-K, dated April 12, 2004. On November 15, 2004, the Applicant late-filed as an exhibit a copy of its parent's quarterly report SEC Form 10-Q for the period ending June 30, 2004, dated September 30, 2004, and a press release dated October 18, 2004. According to the 2003 10-K report, the Applicant has a keep-well agreement with its controlling shareholder, Counsel Corporation, in which Counsel commits to fund all of the Applicant's capital investments, working capital, and other operational cash requirements through June 30, 2005. Counsel Corporation has had similar annual keep-well agreements with the Applicant since 2003. According to the press release, the Applicant's parent company has obtained an additional five million dollars in working capital.

Commission Telecommunications Division rate analyst Mark Hanson reported he had found nothing in his investigation that appears to challenge the conclusion that the Applicant has sufficient technical, managerial, and financial resources and abilities to provide resold local exchange telecommunications services. 220 ILCS 5/13-404. Hanson noted the Applicant has provided separate interexchange telecommunications services in Illinois under Docket 00-0457 for the past four years without incident.

The Applicant requested the Commission waive its obligation to comply with three regulations in the Administrative Code that ordinarily apply to telecommunication carriers authorized to do business in Illinois: Parts 250; 710; and Section 735.180 of Title 83 of the Illinois Administrative Code 83 Ill. Adm. Code.

Section 13-402 of the Act authorizes waiver of regulations when two conditions are met. First, the waiver must reduce the economic burdens of regulation on a carrier. Second, the waiver must not be inconsistent with the law or the purposes and policies of the telecommunications article of the Act. 220 ILCS 5/13-402. In addition, the Commission has discretion to adopt reasonable rules and to alter them in the exercise of its powers. 220 ILCS 5/10-101. Applying these principles, we conclude that the Applicant's obligation to comply with parts 250, 710, and Section 735.180 should be waived.

Part 250 of the Administrative Code requires carriers to maintain in the state of Illinois all books, accounts, papers, records and memoranda they employ in their uniform classification of accounts or use in connection with the regulated business they conduct in this state, except as the Commission may provide. 83 Ill. Adm. Code, Sec. 250.20; implementing 220 ILCS Section 5-106, as applied to telecommunications services under Sections 4-101, 4-201, and 13-101. The Applicant now maintains its records at its office at 9775 Businesspark Avenue, San Diego, California 92131, and

requests permission to keep them there, instead of moving them to Illinois. The Applicant makes this request to avoid the expense of establishing an office in Illinois. The Public Utilities Act requires carriers permitted to maintain their records outside Illinois to reimburse the Commission promptly for the reasonable expenses associated with Commission inspections or audits of these records. 220 ILCS Sec. 5-106. The Applicant agrees to comply with this condition in exchange for this waiver.

Part 710 prescribes a uniform system of accounts for telecommunications carriers' financial records. Ill. Adm. Code Part 710. The Applicant requested a waiver of Part 710's requirements to avoid the expense and effort of establishing and maintaining a new set of financial records using Part 710's system of accounts. The Applicant stated it already keeps its financial records in accordance with generally accepted accounting principles that are equivalent to Part 710's system of accounts, and will continue to do so.

Section 735.180 regulates the issuance telephone directories. 83 Ill. Adm. Code 735.180. The Commission may grant a variance from Part 735 when the Commission finds that the provision from which the variance is granted is not statutorily mandated; no party will be injured by the variance; and the rule from which the variance is granted would be unreasonable or unnecessarily burdensome if applied. 83 Ill. Adm. Code Sec. 735.50. The Applicant's Section 735.180's variance request meets each of these requirements.

If overriding needs for the regulations should appear, we retain the discretion to rescind the waivers and variance we grant here.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Applicant Acceris Communications Corp. is a Delaware corporation authorized to transact business in Illinois is a telecommunications carrier, as that term is defined in Section 13-202 of the Illinois Public Utilities Act (Act), and has filed an application under Sections 13-404 of the Act for a certificate of authority to operate as a reseller of local exchange telecommunications services throughout Illinois;
- (2) the Commission has jurisdiction over the Applicant and the subject-matter of this proceeding, in accordance with Sections 4-101, 4-201, 13-101, 13-203, 13-404 of the Act;
- (3) as required under Sections 13-404 of the Act, the Applicant has demonstrated it possesses sufficient technical, financial, and managerial resources and abilities required to operate as a reseller of local exchange telecommunications services in the state of Illinois;

- (4) in accordance with Sections 13-501 and 13-502 of the Act, the Applicant should file with the Chief Clerk of the Commission a tariff consisting of its rates, rules, and regulations before commencing service;
- (5) the Applicant should establish and maintain books of account for its telecommunications services in the state of Illinois, including revenues from its services subject to the public utility revenue tax, which are segregated from other business activities not regulated by the Commission;
- (6) the Applicant should be granted a waiver from the requirement of Section 250.20 of Title 83 of the Illinois Administrative Code that it maintain all its books, accounts, papers, records, and memoranda it employs in its uniform classification of accounts or uses in connection with the telecommunications services it conducts in Illinois, until determined otherwise, on the condition that the Applicant promptly reimburse Commission for the reasonable expenses associated with Commission inspections or audits of these records, in accordance with Section 5-106 of the Act;
- (7) the Applicant should be granted a waiver from the requirement of Part 710 of Title 83 of the Administrative Code that it adopt the Code's uniform system of accounts for telecommunications carriers' financial records, until determined otherwise, on the condition that the Applicant maintain its records in accordance with generally accepted accounting principles that are equivalent to Part 710's system of accounts;
- (8) the Applicant should be granted a variance from the requirement of section 735.180 of Title 83 of the Administrative Code that it issue telephone directories, until determined otherwise.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Acceris Communications Corp. is granted a certificate of resold local exchange services authority to operate as a reseller of telecommunications services in the state of Illinois, in accordance with the Public Utilities Act. 220 ILCS 5, Sec.13-404.

IT IS FURTHER ORDERED that the certificate shall read, as follows:

CERTIFICATE OF SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Acceris Communications Corp. is authorized, pursuant to Section 13-404 of the Public Utilities Act, to provide resold local exchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that, before commencing the telecommunications services authorized by this certificate, Acceris Communications Corp. shall file with the Chief Clerk of the Commission a tariff in such form as prescribed by the Chief Clerk, consisting of its rates, rules, and regulations, as required under Sections 13-501 and 13-502 the Public Utilities Act. This tariff shall not be effective until it has been filed properly with the Chief Clerk.

IT IS FURTHER ORDERED that, as a condition of this certificate, Acceris Communications Corp. shall establish and maintain books of account for its telecommunications services in the state of Illinois, including revenues from its services subject to the public utility revenue tax, which are segregated from other business activities not regulated by the Commission.

IT IS FURTHER ORDERED that Acceris Communications Corp. shall immediately file with the Chief Clerk of the Commission notice of any change in the address where it maintains its books, accounts, papers, records, and memoranda it employs in its uniform classifications of accounts or uses in connection with the telecommunications services business it conducts in Illinois, as required under Section 5-106 of the Public Utilities Act.

IT IS FURTHER ORDERED that Acceris Communications Corp. is granted waivers from Part 250 of Title 83 of Illinois Administrative Code (carrier's business and financial records to be maintained in Illinois) and Part 710 (prescribed uniform system of accounts), until determined otherwise. Acceris Communications Corp. is granted a variance from Section 735.180 of Title 83 of Illinois Administrative Code, (telecommunications carrier procedures for credit; billing deposits; terminating service; and telephone directories), until determined otherwise.

IT IS FURTHER ORDERED that this order is final, subject to the provisions of Section 10-113 of the Public Utilities Act (Commission authority to rescind, amend, or alter orders) and Title 83 of the Illinois Administrative Code, Section 200.880 (rehearing and appeal procedures). This order is not subject to the Illinois Administrative Review Law, 735 ILCS, Article III.

By Order of the Commission this 23rd day of March, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman